

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MASSACHUSETTS

05 CV 10675 PBS

IN RE ENIVID, INC. (f/k/a DIVINE, INC.) et al.,)	Chapter 11
)	Case No. 03-11472-JNF et al.
Debtors.)	(Substantively Consolidated)
)	
JAMES B. BOLES, LIQUIDATION TRUST)	
REPRESENTATIVE OF THE ENIVID, INC.)	
LIQUIDATION TRUST,)	
)	Adversary Proceeding
Plaintiff,)	No. 04-1439
)	
v.)	
)	
ANDREW J. FILIPOWSKI, PAUL HUMENANSKY,)	
MICHAEL CULLINANE and JUDE SULLIVAN,)	
)	
Defendants.)	

**DEFENDANTS' MOTION TO WITHDRAW
REFERENCE TO BANKRUPTCY COURT**

Pursuant to 28 U.S.C. § 157(d), defendants hereby move to withdraw the reference of this matter to the United States Bankruptcy Court for the District of Massachusetts. In support of this Motion, and as set forth more thoroughly in Defendants' Memorandum in Support of the Motion, Defendants state as follows:

1. The underlying facts in this adversary proceeding are virtually identical to those alleged in two related cases already pending before Judge Patti B. Saris of this District -- *Bobbit v. Filipowski et al.*, No. 04-12263-PBS, and *Turner v. Filipowski et al.*, No. 04-12294-PBS. Accordingly, principles of "judicial economy" mandate that the adversary proceeding be administered with the other related cases, all of which are still in the early pleading stages. The

25

interests of efficiency, the desire to conserve judicial and party resources and the risk of inconsistent adjudication, call for withdrawal.

2. In addition, because the claims in the adversary proceeding are predominantly non-core, the benefits to judicial efficiency achieved by withdrawal are even greater. The District Court, in all events, will eventually be required to undertake *de novo* consideration of the non-core causes of action. Thus, withdrawal at this time provides the added benefit of foregoing an extra level of litigation.

WHEREFORE, for the foregoing reasons, and for the reasons set forth in Defendants' supporting Memorandum, Defendants respectfully request that the District Court withdraw the reference of this adversary proceeding to the Bankruptcy Court.

March 30, 2005

Respectfully submitted,

ANDREW J. FILIPOWSKI,
MICHAEL P. CULLINANE,
PAUL L. HUMENANSKY and
JUDE SULLIVAN

/s/ Samuel B. Isaacson
By: Counsel for Mr. Cullinane

Samuel B. Isaacson
Lawrence A. Wojcik
Joseph E. Collins
DLA PIPER RUDNICK GRAY CARY US LLP
203 North LaSalle Street
Suite 1800
Chicago, IL 60601
312-368-4000

For Andrew J. Filipowski

/s/ Bruce S. Sperling

Bruce S. Sperling
Thomas D. Brooks
SPERLING & SLATER, P.C.
55 West Monroe Street
Suite 3200
Chicago, IL 60603
312-641-3200

D. Ethan Jeffery
Halye A. Sugarman
HANIFY & KING
One Beacon Street
Boston, Massachusetts 02108-3107
617-423-0400

For Paul L. Humenansky

/s/ Joel G. Chefitz

Joel G. Chefitz
James E. Hanlon, Jr.
HOWREY SIMON ARNOLD & WHITE LLP
321 N. Clark Street, Suite 3400
Chicago, IL 60610
312-595-1239

For Michael P. Cullinane

/s/ Samuel B. Isaacson

Samuel B. Isaacson
Lawrence A. Wojcik
Joseph E. Collins
DLA PIPER RUDNICK GRAY CARY US
LLP
203 North LaSalle Street
Suite 1800
Chicago, IL 60601
312-368-4000

For Jude Sullivan

/s/ John J. Falvey, Jr.

John J. Falvey, Jr.
GOODWIN PROCTER
125 High Street
Boston, Massachusetts 02110
617-570-1000

CERTIFICATE OF SERVICE

I hereby certify that on this 30th day of March 2005, a true and correct copy of the foregoing **DEFENDANTS' MOTION TO WITHDRAW REFERENCE TO BANKRUPTCY COURT and MEMORANDUM IN SUPPORT OF MOTION TO WITHDRAW REFERENCE TO BANKRUPTCY COURT** was served upon the parties listed below *via* United States First Class Mail, properly addressed and postage prepaid.

/s/ Samuel B. Isaacson

Warner Stevens, LLP
Michael D. Warner, Esq.
Lewis T. Stevens, Esq.
Kenneth C. Greene, Jr., Esq.
Jeffrey R. Erler, Esq.
301 Commerce Street, Suite 1700
Fort Worth, TX 76102
*Counsel for James B. Boles, Liquidation Trust
 Representative of enivid, Inc., Liquidation
 Trust*

Bruce S. Sperling
Thomas D. Brooks
SPERLING & SLATER, P.C.
55 West Monroe Street, Suite 3200
Chicago, IL 60603
Counsel for Andrew J. Filipowski

Joel G. Chefitz
James E. Hanlon, Jr.
HOWREY SIMON ARNOLD & WHITE
LLP
321 N. Clark Street, Suite 3400
Chicago, IL 60610
Counsel for Paul Humenansky

John J. Falvey, Jr., Esq.
Rachel S. Spooner, Esq.
Francis G. Kelleher, Esq.
GOODWIN PROCTER LLP
Exchange Place
53 State Street
Boston, MA 02109
Counsel for Jude Sullivan

D. Ethan Jeffery
HANIFY & KING, P.C.
One Beacon Street
Boston, MA 02108
Counsel for Andrew J. Filipowski

Theodore T. Poulos, Esq.
COSTSIRILOS, TIGHE & STREICKER
33 n. Dearborn Street, Suite 600
Chicago, IL 60602
Counsel for Jude Sullivan

JS 44 (Rev. 11/04)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

JAMES B. BOLES, Liquidation Trust Representative of the Enivid, Inc., Liquidation Trust

DEFENDANTS

ANDREW J. FILIPOWSKI, PAUL HUMENANSKY, MICHAEL CULLINANE and JUDE SULLIVAN

(b) County of Residence of First Listed Plaintiff _____
(EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed _____
(IN U.S. PLAINTIFF CASES ONLY)
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

(c) Attorney's (Firm Name, Address, and Telephone Number)
Warner Stevens, LLP
Michael D. Warner, Lewis T. Stevens, Jeffrey R. Erler
301 Commerce Street, Suite 1700
Fort Worth, TX 76102
(817) 810-5250

Attorneys (If Known)
DLA PIPER RUDNICK GRAY CARY US LLP
Samuel B. Isaacson, Esq.
203 N. LaSalle Street, Suite 1900
Chicago, IL 60601-1293
(312) 368-4000
Attorneys for Michael Cullinane

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- | | |
|--|--|
| <input type="checkbox"/> 1 U.S. Government Plaintiff | <input checked="" type="checkbox"/> 3 Federal Question (U.S. Government Not a Party) |
| <input type="checkbox"/> 2 U.S. Government Defendant | <input type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III) |

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)
(For Diversity Cases Only)

	PTF	DEF	PTF	DEF
Citizen of This State	<input type="checkbox"/> 1	<input checked="" type="checkbox"/> 1 Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input checked="" type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input checked="" type="checkbox"/> 2 Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input checked="" type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input checked="" type="checkbox"/> 3 Foreign Nation	<input type="checkbox"/> 6	<input checked="" type="checkbox"/> 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury—Med. Malpractice <input type="checkbox"/> 365 Personal Injury—Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input checked="" type="checkbox"/> 422 Appeal 28 USC 158 <input checked="" type="checkbox"/> 423 Withdrawal 28 USC 157
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS	PROPERTY RIGHTS	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 510 Selective Service <input type="checkbox"/> 850 Securities/Commodities/ Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Act <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
<input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/ Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities Other <input type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	<input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DW/C/DIW W (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))
			SOCIAL SECURITY	<input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Act <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
			FEDERAL TAX SUITS	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609

V. ORIGIN (Place an "X" in One Box Only)

- | | | | |
|--|---|--|---|
| <input type="checkbox"/> 1 Original Proceeding | <input type="checkbox"/> 2 Removed from State Court | <input type="checkbox"/> 3 Remanded from Appellate Court | <input type="checkbox"/> 4 Reinstated or Reopened |
|--|---|--|---|

Transferred from

5 another district (specify)
referred to US Bankruptcy Ct, MA

6 Multidistrict Litigation

Appeal to District

7 Judge from Magistrate Judgment

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

VI. CAUSE OF ACTION

Brief description of cause:

Withdrawal of Reference to Bankruptcy Court, Dist. of Massachusetts , No. 04-1439-JNF

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION
UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:
JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE Saris

DOCKET NUMBER 04-12263 & 04-12294

DATE

March 30, 2005

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFFP

JUDGE

M/Audited LegalNet, Inc. www.USCourtForms.com

SIGNATURE OF ATTORNEY OF RECORD

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44**Authority For Civil Cover Sheet**

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

I. (a) **Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.

(b) **County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)

(c) **Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".

II. Jurisdiction. The basis of jurisdiction is set forth under Rule 8(a), F.R.C.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.

United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.

United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.

Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.

Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; federal question actions take precedence over diversity cases.)

III. Residence (citizenship) of Principal Parties. This section of the JS-44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

IV. Nature of Suit. Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerks in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.

V. Origin. Place an "X" in one of the seven boxes.

Original Proceedings. (1) Cases which originate in the United States district courts.

Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.

Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.

Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.

Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a) Do not use this for within district transfers or multidistrict litigation transfers.

Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.

Appeal to District Judge from Magistrate Judgment. (7) Check this box for an appeal from a magistrate judge's decision.

VI. Cause of Action. Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553
Brief Description: Unauthorized reception of cable service

VII. Requested in Complaint. Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.

Demand. In this space enter the dollar amount (in thousands of dollars) being demanded or indicate other demand such as a preliminary injunction.

Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

VIII. Related Cases. This section of the JS-44 is used to reference related pending cases if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.